

SB 244 is my clean up bill for the Department of Revenue. I believe there are several issues where DOR is overcharging or otherwise making it needlessly difficult for MT taxpayers.

I've known of some of these issues for several years in my CPA practice, and finally decided to do something about it last session. I filed a proper extension on some tax returns in April; completed the returns before the October 15th extended due date, and sent the returns in together with the additional tax owing. I later received bills for interest and penalties; I did the calculations and determined that the total annualized charges amounted to roughly 33 to 34% per annum. I've spoken with several other CPA's who've seen similar exorbitant charges. Which is why the MT Society of CPA's will be here as a proponent today.

So here's what the bill does:

- 1) It reduces overly high MT late charges and conforms them with federal IRS rates for late payment.
- 2) It directs DOR to issue one combined deficiency notice to married couples for the combined amount owing, and one combined refund notice as well. Because the DOR changed their practices back in 06, many two wage-earner families were confused by multiple notices, and some faced complications and unnecessary tax increases on their federal returns.
- 3) It codifies the tax benefit rule as it relates to federal tax refunds, so that there is no more ambiguity --- Your federal tax refund is only subject to MT tax if it reduced MT taxes in the prior year. I recognize DOR has already backed away from earlier insistence on this issue, but I think it's preferable to have it right in statute rather than rule, so that no future DOR director could reverse that ruling again.
- 4) It eliminates an archaic rule allowing the DOR to charge the federal rate, or 8%, whichever is higher. I submit that if we have the technology to compute the federal rate for purposes of charging more than 8%, we can certainly also do that same computation for less than 8%; and everyone agrees it's preferable that we conform our rules as much as possible to follow federal law.
- 5) It eliminates the DOR's ability to charge you a full month's interest when you're only one day or one week into the next month. And this is one issue which I've considered particularly egregious. In Senate Bus & Labor, we had a bill last session attempting to clamp down on paycheck advance loans, because the APR can run as high as 300 or 400%. But during that hearing I did the calculations to show that DOR's interest rate can run as high as 432% if you're only 1 day into the next month, because of the Neanderthal practice of charging you a full month's interest for any portion of a month.
- 6) It clarifies a safe harbor rule for estimated tax payments, that you're not subject to an estimated tax underpayment penalty if you made substantially equal payments satisfying the estimated tax requirements.
- 7) I also have an amendment, dealing with instances where the DOR is penalizing people even when the taxes are paid in full. If the taxpayer writes back in 30 days begging forgiveness and paying the penalty, DOR then abates the penalty, sends a 3rd letter back to the taxpayer, and reissues a new check refunding the exact same amount back to the taxpayer. The amendment just says, if all that's owing is abatable penalty, let's just dispense with the three letters and two checks going back and forth, and just abate the penalty up front.

The MT Society of CPA's testified in favor of this bill last session; and **it passed the Senate 50-0** only to be vetoed by the Governor. One potential problem which DOR highlighted in previous hearings is federal rules governing the issuance of 1099-G's for State refunds. I'd like the committee to note that MT DOR only changed their rules in 06 and started issuing separate refund notices when one spouse's refund went to pay the other spouse's balance due. Previously, MT combined them into one net refund notice; and the Feds never raised any issue with that practice. SB 244 just says to go back to doing it the old way. Moreover, the committee should be aware that the current practice actually results in a net reduction to MT tax revenue, because it results in higher federal taxes, which are deductible on MT income taxes. If we pass SB 244, we make things simpler for MT taxpayers and accountants, lower federal taxes, and increase MT revenue. I can't imagine why we wouldn't want to do that.

I want to briefly address the elephant in the room -- the veto last session. Governor Schweitzer vetoed SB514, a bill identical to SB244, which had passed the Senate 50-0. As SB244, that bill simply set MT late payment penalties and interest equal to what the IRS charges, and it also simplified MT income tax procedures.

Five times in his veto letter from last session, the Governor erroneously referenced "late filers", and "late filing penalties" as his excuse for vetoing the bill. But *SB514 had nothing to do with late filing penalties, nor does SB244*. Montana's late filing penalties are substantial, and they're not modified one iota by SB244. SB244 only applies to late payment penalties which are assessed against Montanans even if they've filed extensions and file their return (with payment in full) by the extended due date. I want to make sure everybody is clear on that issue, including the Governor.

I'd like to quickly talk about the fiscal note. One significant difference since last session is a **fiscal note which is substantially less than the one we had last year on the same bill (\$ ½ million annually versus more than \$4 million annually last time)**. I think this fiscal note is far more accurate, and perhaps it signals a new willingness on the part of DOR to acquiesce on this issue. We've approached the Dept of Revenue to see if they're going to be opponents to this legislation; and so far haven't got an answer. I guess we'll know here shortly. But all that having been said, I think the current SB244 fiscal note is still too high. They're claiming it will cost \$200,000 to re-program to combine the state refund amount. But, as I've already pointed out, until around 2006, that's the way we did it.... It's now going to cost \$200,000 to just switch back?

MT's income tax system is one of voluntary compliance. And, as my final point, I want to focus a little time on that issue. Last session, many of you received a letter from a former IRS Treasury agent supporting SB514, last session's version of this same bill. I'd like to read a couple excerpts from that letter:

Unlike late filing penalties, "Late payment penalties and interest are assessed against honest Montanans who file their returns on or before the extended due date, and even pay all their tax due by that date. *Without passage of SB244, honest Montana taxpayers are being assessed late pay penalties as much as 3 times as high as the IRS charges.*

During my Treasury career, I found that some honest taxpayers get unfortunately caught up in single-year tax situations which cause them to "slide out" of our voluntary income tax reporting system. This often happens when they make every effort to comply with the law, yet then find themselves nonetheless assessed enormous penalties and interest charges which seem just completely unjust. At the federal level, in depth study has been devoted to developing a penalty and interest structure which provides sufficient incentive for taxpayers to pay their taxes on a timely basis, yet such penalty and interest charges aren't set so high so as to present a destructive barrier for taxpayers who wish to catch up on late tax payments.

SB244 addresses this important issue where Montana taxpayers are being overcharged. Even taxpayers who have filed proper extensions find themselves being charged exorbitant penalty and interest rates which can be as high as 30+% per annum. SB244 sets the DOR's interest and penalty provisions to exactly match the interest and penalty rates charged by the IRS. The fact that SB244 shows a fiscal note is only proof that Montana has been grossly over-charging its own citizens.

But from my substantial experience with federal income tax compliance, I ask you to consider an issue which the Governor's advisors may not have even posited. If you don't vote [for SB244], it's quite possible that you will actually cost the state treasury enormous sums of money far exceeding the fiscal note on this bill. In a tax system totally reliant upon voluntary compliance, provisions which are grossly and unfairly onerous, lead otherwise honest citizens to "slide out" of the system. As a former investigator of chronic non-filers, I can assure you that the cash flow lost from multi-year non-filers makes the annual cost of this bill miniscule in comparison. I urge legislators to set politics aside and vote for passage of this bill. SB514 passed [the Senate] unanimously last session, and SB244 has extensive bi-partisan co-sponsorship. It is heavily supported by the Montana Society of CPA's. Why? Because this bill has great merit with respect to tax-fairness. Moreover, as I've demonstrated, the cost of not passing this bill may even be higher than the cost of passing it."

With that, I'll distribute a written copy of my comments for the record, listen to proponents and opponents if any; answer questions, and reserve the right to close.